

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

GARY L. POLING,

Plaintiff,

v.

Civil Action No.1:08-CV-161

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

**REPORT AND RECOMMENDATION PLAINTIFF'S APPLICATION TO PROCEED
IN FORMA PAUPERIS BE DENIED**

On July 25, 2008, Gary L. Poling, ["Plaintiff"], filed a complaint under 42 U.S.C. § 405(g) and an Application for Leave to Proceed in forma pauperis. Plaintiff's application reveals his average monthly income during the past twelve months was \$2,509, and his spouse's average monthly income during the past twelve months was \$456. Plaintiff's application also reveals he and his spouse have \$1,600 in a joint checking account; own a log home valued at \$100,000; and own a 2004 Toyota RAV-4 and a 2005 Toyota Corolla. Their monthly expenses total \$2,850, and are shared equally. They have no dependents. The Court finds Plaintiff can afford the filing fee.

Accordingly, it is recommended Plaintiff's July 25, 2008 Application to Proceed in forma pauperis be **DENIED**, and Plaintiff be ordered to pay the full filing fee.

Plaintiff may file, within ten (10) days from the date of this Report and Recommendation, with the Clerk of Court, written objections identifying those portions of the recommendation to which objection is made, and the basis for such objections. A copy of such objections should

also be submitted to the District Court Judge of Record. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to mail a copy of this Report and Recommendation to the *pro se* plaintiff and counsel of record, as applicable.

DATED: July 30, 2008

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE